IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1451 of 1994

with

FIRST APPEALNo 1452 of 1994

with

FIRST APPEAL No 1453 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

OIL & NATURAL GAS COMMISSION

Versus

MODERN CONSTRUCTION & CO

Appearance:

1. First Appeal No. 1451 of 1994

MS V.P.SHAH FOR KJ BRAHMBHATT for Petitioners

MR HK PARMAR for Respondent

2. First AppealNo 1452 of 1994

MS V.P.SHAH FOR KJ BRAHMBHATT for Petitioners
MR HK PARMAR for Respondent

3 First appeal No. 1453 of 1994
MS V.P.SHAH FOR K.J.BHRAMBHATT FOR PETITIONERS
MR H.K.PARMAR FOR Respondent.

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE M.H.KADRI
Date of decision: 18/03/97

ORAL JUDGEMENT

What is the correct interpretation and applicability of the provisions of Section 20 (c) of the Code of Civil Produre.,1908 (CPC) and Section 4 of the Indian Contract Act, 1872 (Act) are the legal questions in focus in this batch of First Appeals.

Which is the place of making of contract? Whether the communication of acceptance of offer is complete at a place from where and when it is sent by telegram ? Whether part of cause of action for breach of contract arises at the place of transmission i.e. sending communication or place of receipt of it when made by a letter or telegram ? These are the important questions raised for our consideration and adjudication in three First Appeals against three impugned judgments and decrees recorded in Special Civil Suits Nos. 60,61 and 62 of 1996 by the learned Civil Judge (Senior Division) at Mehsana in favour of the plaintiff-contractor.

The conspectus of relevant material facts may be stated at the outset:

The appellants are the original defendants against whom the aforesaid suits for damages for breach of contract and refund of security amount came to be filed in the court of the learned Civil Judge (Senior Division) at Mehsana by the respondent who is the common original plaintiff . The parties are hereinafter referred to as plaintiff-contractor and defendants-ONGC for the sake of convenience and brevity as they were arraigned in the trial court.

The plaintiff is a registered partnership firm engaged in

the construction work having office at Mansa in Mehsana District.. Defendant No.1 is the Oil and Natural Gas Commission which is a statutory body established by the Oil and Natural Gas Commission Act, 1951 (Central Act No.4/49) ('ONGC') . Defendants Nos.2,3 and 4 were the officers of the ONGC at the relevant time. ONGC invited offers by tender notice for construction work as ONGC was desirous of getting constructed cement godown, site office premises and warehouses for LPG plant at Kawas-Hajira in Surat District, (10 kms.from City of Surat).

The plaintiff firm made offers pursuant to the said tender notice. The offers in respect of three construction works of ONGC made by the plaintiff firm were accepted by and on behalf of ONGC and work orders were issued alongwith execution of former agreement on stamp papers on 9.2.1984 in respect of the three construction works. Works were to be executed within a stipulated time ranging from four to six months,after shifting the date for commencement, thereof, on 1.6.1984.

In view of disputes between the parties, the plaintiff firm filed the aforesaid three suits in the court of the learned Civil Judge (Senior Division) at Mehsana inter alia contending that the department concerned of ONGC failed to perform reciprocal contractual obligations and there was,therefore, breach of contract. Since final bills were also not settled, the plaintiff firm had prepared final bills and had sent them to Surat office of ONGC by a covering letter. However, the final bills could not be finalised and paid. In short, the plaintiff claimed recovery of damages by filing the three suits alleging breach of contract on the part of ONGC. Relevant other particulars relating to the three suits and resultant three appeals are articulated in the following tabular form:

S.No	No.of suit.	Amount claimed. Rs	Amount decreased. Rs	No.of Appeal
1.	60/86	1,50,616	91,115.75	1453/94
2	61/86	2,58,757	2,43,542	1452/94
3.	62/86	4,09,147	3,10,245	1451/94

The dispute revolves round as to who was responsible for breach of contract and whether the plaintiff firm was entitled to claim damages and if yes, to what extent in view of the pleadings between the parties.
The claims made in the suit by the plaintiff contractor came to be resisted by ONGC by filing written statements inter alia contending that there was no breach of contract on the part of the defendants and that the suits filed by the plaintiff are not maintainable as the court at Mehsana had no jurisdiction. In that, it was further contended that no cause of action had arisen within the territorial jurisdiction of the civil court at Mehsana. It was also contended by the ONGC that the contractor was not entitled to the claims made in the suits as the contrctor firm had committed breach of contract and had rendered itself liable under the law.

In view of the pleadings between the parties and the facts and circumstances emerging from the record, the Civil court at Mehsana had framed issues and one of the common issues was "whether the defendants proved that the civil court at Mehsana had no jurisdiction? " After considering the evidence and hearing the submissions on behalf of the parties, the trial court recorded the impugned judgments and decrees in the aforesaid three suits. The suits of the plaintiff-contractor came to be decreed. The trial court held issue of jurisdiction against ONGC. The amount decreed in each of the suits is highlighted in the aforesaid table.

Being aggrieved by and dissatisfied with the impugned judgments and decrees recorded by the trial court in the above suits, the original defendant ONGC has now come up before this court by filing these three appeals invoking the aids of provisions of Section 96 of the CPC.

The learned advocate appearing for ONGC has firstly seriously submitted that the civil court at Mehsana had no territorial jurisdiction to try the suits as no cause of action had arisen within the territorial jurisdiction of that court. This submission is seriously controverted by the learned advocate for the plaintiff-contractor firm.

Since the issue of jurisdiction is going to the root of the matter, we propose to deal with and decide it first.

The observations made by the trial court on the common issue of jurisdiction in all the impugned judgments are seriously criticised by the learned advocate for the defendant-ONGC. The learned advocate appearing for the plaintiff -contractor has contended that the civil court at Mehsana had jurisdiction to entertain the suits for breach of contract as part of the cause of action had arisen within the territorial jurisdiction in view of the following aspects:

(i) that intimation of conclusion of contract like that acceptance of tender agreement was received from Surat by telegram at Mansa in Mehsana District at the office of the plaintiff-contractor;

(ii) that money due and payable under the work contracts had to be paid at Mansa in Mehsana district;

(iii) that the doctrine of debtor should find creditor applies bringing territorial jurisdiction of civil court Mansa at Mehsana as a place of suing.

It would be appropriate to highlight that offers in respect of contracts in question pursuant to the tender notice had been sent by the contractor from Mansa to Surat. Offers had been accepted by Bombay office of ONGC. The agreements after acceptance of offers had been executed at Bombay. Intimations of acceptance of offers of contractor by ONGC had been sent by telegram sent from Surat by Surat office of ONGC at Mansa in Mehsana district.

The question which falls for our consideration and determination is whether receipt of intimation of acceptance of offers is a continuing process before conclusion of the contract ? In other words, whether contracts in question could be said to have been concluded immediately on sending telegrams of acceptance of offers at Surat or at the time of receipt of such intimations from ONGC by the contractor at Mansa from Surat ? In our opinion, according to the settled proposition of law, the contract is concluded immediately on communication of acceptance of offers from and at the place of sending it and not the place of receipt of such intimation or communication of acceptance. Therefore, when the offer of the proposer is accepted , it becomes a promise. The contract stands concluded at the place where offer is accepted and its communication is sent.

Communication of acceptance of such offer is complete as against proposer when it is put in the course of transmission to him. ONGC accepted the offers of the contractor and became acceptor when it was put in course of transmission from Surat to Mansa by telegram. Thus the place of communication of an acceptance occurred at Surat and intimation of acceptance was transmitted by telegmram by ONGC to the contractor from Surat to Mansa. In fact, above facts clearly go to suggest that there was no acceptance of offers or conclusion of the contract at Mansa .

Section 4 of the Contract Act provides as to when communication of acceptance of offer becomes complete. Section 4 as such is very relevant and important . It would,therefore, be expedient at this stage to refer to provisions of Section 4 of the Contract Act. Section 4 reads as under:

"4. The communication of a proposal is complete when it comes to knowledge of the person to whom it is made.

The communication of an acceptance is complete-

as aginst the proposer,when it is put in a course of transmission to him so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer;

The communication of revocation is complete-

as against the person who makes it,when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge."

It could very well be visualised from the aforesaid provisions that communication of acceptance of offer statutorily becomes complete as against proposer (in the present case the contractor) when it is put in course of transmission to him and when it is out of power of acceptor. No doubt, it is true that as against acceptor, such communication will become complete when it comes to the knowledge of the proposer. When offers came to be

accepted by ONGC, communication of acceptance was sent by ONGC to the contractor from Surat to Mansa by telegrams. It therefore becomes clear that communication of acceptance became complete qua contractor who was original proposer when intimation was sent into transmission by telegram from Surat to Mansa.

Thus, communication of acceptance of offers maturing into conclusion of contract is complete as against the contractor when telegrams were sent from Surat and as against the accepter ONGC when the telegrams were received by the proposer-contractor. It means that contract came to be concluded the moment telegrams were sent from Surat as there was completion of acceptance of offers insofar as proposer of the offer was concerned and qua proposer contractor and proposals became promises. But insofar as acceptor ONGC was concerned, it become complete when telegrams were received by the contractor. Thus, the acceptor ONGC had an option to revoke the acceptance of offers till communication is received by the proposer .

Therefore,the contention that contract was completed at place Mansa in Mehsana district on the ground that intimation of communication of acceptance i.e. the telegrams were received is not sustainable. Such a contention was wrongly accepted by the trial court at Mansa in Mehsana district.

The tenders were accepted at Bombay . The work orders were issued by the Superintending Engineer , Gujarat on 9.2.1984 and admittedly not at Mansa. The works were to be performed at Hajira in Surat District. Payments were made at Bombay and Surat. Partner of contractor firm Mr. Khodidas Jethabhai has also admitted in his evidence at Ex. 79, para 11 that whatever payments were made had been taken by contractor firm and had been paid and made at Surat and Bombay offices only.

The relevant statutory provisions with regard to place of suing are incorporated in Civil Procedure Code (CPC) in Sections 15 to 25. Insofar the present case is concerned, it may be noted that Section 20 (c) is relied on. It is the case of the contractor that the civil court at Mehsana got jurisdiction as part of cause of action had arisen within the territorial jurisdiction of that court. Thus, it is the case of the contractor that making of contract is part of cause of action and the contract could be said to have been made and concluded at Mansa and therefore the civil court at Mansa had jurisdiction. Section 20 of the CPC reads as under :

"20. Subject to the limitation as aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one,at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants,where there are more than one,at the time of the commencement of the suit,actually and voluntarily resides, or carries on business , or personally works for gain provided that in such case either the leave of the court is given or the defendants who do not reside, or carry on business, or personally woprk for gain, as aforesaid, acquiescence in such institution; or

(c) the cause of action,wholly or in part, arises."

This is a general Section embracing all personal actions, At common law actions are either personal or real.Personal actions are also called transitory because they may occur anywhere,such as actions for tort to persons or to movable property or suits on contracts.Res actions are actions against the res or property and are called local because they must be brought in the forum res sitoe,that is,the place where the immovable property is situated.

In the present case,the suits came to be filed on the basis of allegation of breach of contract . The plaintiff contractot in all the three suits contended that making of the contract being part of cause of action had occurred within the territorial jurisdiction of Mansa at Mehsana civil court. The said court had territorial jurisdiction. The trial court on examining the facts and circumstances held in favour of the plaintiff contractor and held that part of cause of action arose at Mansa on the ground that communication of acceptance of offer came to be received by the contractor at Mansa. With due respect, this finding is not proper,correct and legal.In view of the facts of the present case , communication of acceptance of offer becomes complete qua proposer at the time when intimation or communication is sent if it is sent by post or telegram ,as in the present case. It will be complete at the moment when it is posted or

communicated by telegram from the place of sending telegram. This proposition of law appears to have not been properly examined and appreciated by the trial court which has resulted into miscarriage of justice and,therefore,in our opinion, the finding of the trial court with regard to issue pertaining to jurisdiction is required to be quashed and set aside.

It is also contended that the finding with regard to jurisdiction is correct in view of clause 9A of the tender agreement. Relying on this clause, it is contended that payment was to be made at Mansa, the place where the contractor has office and place of business. This submission is not acceptable in view of the facts on record and the correct interpretation of the said clause. Clause 9A of the contract reads as under :-

"Clause 9A- Payments due to contractor may,if so desired by him,be made to his bank instead of direct to him, provided the contractor furnishes to the engineer in charge (l) an authorisation in the form of a legally valid document such as a power of attorney conferring authority on the bank to receive payment and (2) his own acceptance of the correctness of the account made out as being due to him by Commission or his signature on the bill or other claim preferred against Commission before settlement by the Engineer in charge of the account or claim by payment to the bank . While the receipt given by such bank shall constitute a full and sufficient discharge for the payment ,the contractor should,wherever possible, present his bills duly receipted and discharged through his bankers.

Nothing herein contained shall operate to create in favour of the bank any rights or equities vis a vis the Commission."

It could very well be seen from the aforesaid clause that payment of contractor's bills could be arranged through bank instead of directly to the party. It is not in dispute that no such arrangement was made pursuant to Clause 9A. No power of attorney conferring authority on bank to receive payment was ever made. If such special arrangement is made and that too with a bank situated within the territorial jurisdiction of the civil court at Mansa, then in that case, non-payment of amount of bill may furnish a cause of action. Clause 9A cannot, therfore, be pressed in service in the present case- as no such arrangement has been made much less

arrangement through bank situated within the territorial jurisdiction of Mansa court.

The parties have placed reliance on the case law in support of their rival contentions.It would,therefore, be necessary at this stage to refer to and examine first the relevant provisions of law. As stated hereinbefore, the provisions for selection of place of suing are incorporated in Sections 15 to 25 in CPC. The said provisions prescribe rules for assumption of territorial jurisdiction by Indian courts in matters within their cognizance. No doubt, jurisdiction of a court may again be original or appellate. In the exercise of its original jurisdiction, a court entertains original suits. In exercise of its appellate jurisdiction, it entertains appeals. The expression 'competent' used in the aforesaid provisions of the CPC has reference to the jurisdiction of a court. Jurisdiction means the extent of the authority of a court to administer justice not only with reference to the subject matter of the suit but also to the local and pecuniary limits of its jurisdiction. In the present case,the question is of territorial jurisdiction.

Section 15 provides that suit shall be instituted in the court of thE lowest grade competent to try it. In the present case, suits are required to be instituted in the court of Civil Judge (Senior Division) in view of the pecuniary claims made by the plaintiff-contractor. Section 16 is one of the group of sections which relate to courts in India and to immovable property situated in India. This Section is not relevant for the present. Section 17 also relates to suits for immovable property situated within the jurisdiction of different courts. Section 18 provides place of institution of suit where local limits of jurisdiction of courts are uncertain. Section 19 prescribes a place where suit for compensation for wrongs to person or movables can be filed. Essentially section 19 relates to suit for action for wrong and wrong means tort or actionable wrong.

The main provisions with which we are vitally concerned in this group of appeals is Section 20 which we have reproduced hereinabove. Section 20 is a general section making provisions for all personal actions. The principle underlying Section 20 (a) and Section 20 (b) is that suit has to be filed at a place where defendant can defend the suit without undue trouble. Section 20 (c)

provides that suit can be instituted in a civil court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises

Needless to state that suit is always based on cause of action. CAUSE OF ACTION means every fact,which,if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court.It is time and again held in number of cases that it is bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It is,therefore, incumbent upon the plaintiff to prove that cause of action has arisen in part or wholly within the jurisdiction of the civil court where the suit is instituted. Obviously, cause of action must be antecedent to the institution of the suit.

We are vitally concerned with the cause of action founded upon the contracts. In suits arising out of contract, the cause of action arise within the meaning of Section 20 (c) of the CPC out of any of the following places,

(i) the place where the contract was made'

(ii) the place where the contract was to be performed or came to be performed;

(iii) the place wherein performance of the contract any money due thereunder expressly or impliedly has to be carried out.

In suit for damages for breach of contract, cause of action consists of making of contract and of its breach so that suit may be filed either at the place where contract was made or at the place where it could have been performed or where breach of contract occurred. In suit for damages for breach of contract, the venue for filing suit on contract is determined on the aforesaid aspects and principles. It may also be clarified that suit on contract can be filed at a place where cause of action has arisen in whole or in part of the cause of action.

Making of contract is part of cause of action and suit on contract , therefore,can also be filed at a place where contract was concluded or made. Determination of the place where it came to be made is part of the law of contract. Contract is made by correspondence like that, by letters or telegrams. When it is made by

correspondence, the place where letter or tlegram of acceptance is posted ,so far as proposer is concernbed, is the venue for filing suit on the basis of place of making the contract. If it is repudiated, at a place where such repudiation is received. In the present case, the proposal made by the contractor pursuant to the tender notice which has invited to make offer, became promise when ONGC accepted the proposal and sent telegram at Mansa from Surat . Therefore, the contract became concluded qua proposer like that- contractor not upon receipt of intimation of telegram at Mansa sent from Surat by ONGC. Cause of action,therefore, arose not at Mansa but at Surat or Bombay as contract became concluded on despatch of acceptance of offers by telegram. It is admitted fact that acceptance of tender offers of the the contractor was made by ONGC and communication thereof was sent from Surat by telegram which came to be received at Mansa by the contractor. In the circumstances, considering the provisions of Section 20 (c) of the CPC and provisions of Section 4 of the Contract Act, part of cause of action arose at Surat or Bombayand not at Mansa.

Performance of contract is part of cause of action and suit in respect of breach can also be filed at a place where contract should have been performed or it has never completed. In the present case, we are not concerned with this aspect. Place of performance is expressed in the contract and construction works and the place of performance was at Surat. Therefore, that point is also not coming to the aids of the contractor.

Part of cause of action would arise where money is expressly or impliedly payable under the contract. As stated hereinbefore, clause 9A of the contract provided special arrangement for payment of contractor's bills in bank which was not availed of. Thus,there is no dispute that the arrangement which was available pursuant to the clause incorporated in the contract clause 9A had not been availed of. Therefore, no special arrangement was made. Even if such arrangement had been made, the question would be - whether it was such an arrangement through bank which was or was not situated in the local territorial jurisdiction of the court where the suit came to be instituted. Clause 9A is wrongly interpreted by the civil court.

The observations made by the trial court in deciding the issue pertaining to jurisdiction are also not sustainable. It is not shown from the record that money due under the contract was payable within the jurisdiction of the court at Mansa . The contractor also

cannot be allowed to fall back on the principle of debtor must find creditor' as the facts do not admit existence and aplicability of such principle in light of the evidence on record. On the contrary, payment was to be made by cheques. It is an admitted fact that money due and payable under the contract was to be paid through cheques and not by cheque in the name of the bank situated within the territorial jurisdiction of Mansa in Mehsana District. Therefore, reliance on the doctrine of 'debtor must find creditor' in the absence of any other provisions, is also misplaced and illconceived. Payment was to be made through cheques of ONGC to the contractor. If such cheques are encashed by the contractor through ONGC 's bank not situated within the territorial jurisdiction of civil court at Mansa in Mehsana district, it will not ipso facto give cause of action ,according to the settled proposition of law. In fact, it was the duty of the debtor to apply to the creditor to appoint reasonable place for performance of promise and to perform at such place in view of the said clause 9-A. No such arrangement was made. Even special arrangement contemplated under Clause 9A was not availed of by the contractor. Therefore,in our opinion, the trial court has committed a serious error in relying on the aforesaid principle while determining the issue of jurisdiction in favour of the contractor. The partner of contractor firm has clearly admitted in para 11 of his testimony at Ex. 59 that all payments were made at Surat and Bombay only.

The learned advocate for the contractor has placed reliance on the decision in the case of Bhagwadas vs. Girdharlal and Co. AIR 1966 SC 543 . It is true that in that case, in case of breach of contract, a suit for damages was filed at the forum where cause of action had arisen on the basis of making of contractr.In other words,at a place where acceptance of offers was sent and received i.e.intimation by the promisee to the proposer. It was further held that contract is made at place when acceptance is received and part of cause of action had arisen for suit for damages for breach of contract. It may be noted that after having examined this decision, we have no hesitation in finding that it cannot be pressed into service by the learned advocate for the contractor. Although it is true that intimation of acceptance of contract was given at a place where as such the suit was instituted and it was held that the cause of action in part arose at the place where intimation was received. But it was a case of conclusion of contract through telephone and not through telegram. The analogy which is accepted in the aforesaid decision cannot be applied to the facts of the present case inasmuch as the contract

came to be concluded in the present case by sending telegram. Therefore, manifestation of acceptance of offer to the contractor came to an end when telegram was sent or posted from Surat to its onwards journey to Mansa where the contractor has a place of business. Therefore,the real place of making of contract is a place where communication came to hand or received and in case of communication by post or telegram, place where it started its journey and not at the pace where it ended. In case of telephonic intimation, the same is received by the party directly on the other end from promisee.This distinction must be borne in mind before placing reliance on the aforesaid decision. In the said case, the contract was held to be made or held to be concluded at a place where intimation was received because intimation was sent through telephonic conversation whereas,in the cases on hand, the contract came to be made through telegram. Therefore, the place where telegram came to be posted or despatched is the place where cause of action in part would arise and not the place where it came to be received. In view of the thin but real distinction in the aforesaid decision does not in any way come to the rescue of the contractor. Therefore, the said decision does not help the contractor.

It is,therefore, rightly said "Offer is just like a train of gun powder and acceptance thereof is like a lighted match to it". Therefore, when offer is accepted and when it is communicated by telegram from the place, it became complete upon the transmission and that place is the venue where part of cause of action arises as contract is concluded at that place.

Next reliance is placed on the decision of the Karnataka High court in Republic Medico Surgical Co. vs. Union of India,AIR 1980 Karnataka,168 . It is true that reliance is also placed in this decision on the aforesaid decision of the Supreme court in Bhagwandas's case (supra). In our opinion, with due respect, the learned Single Judge has not made correct interpretation and has not properly appreciated the ratio propounded in Bhagwandas's case (supra). The proposition of law in Bhagwandas's case (supra) cannot be read regardless of the mode of communication that wherever communication or intimation of acceptance is received becomes place where part of cause of action arises. One cannot be oblivious of the fact of the mode and manner in which acceptance is signified or manifested. We have not been able to persuade ourselves to agree to the proposition laid down in the said decision of the Karnataka High court.

Reliance is next placed on the decision of the Honourable apex court in M/s Bakhtawar Singh Balkrishan vs. Union of India,AIR 1988 sc 1003. After having given dispassionate thoughts to the ratio of the said decision, we are of the opinion that the said decision is not at all applicable to the facts of the present case. In our opinion, the said decision is inapplicable in the backdrop of the facts of the present case.

Reliance is also placed on the decision in M/s Ajanta Enterprisers vs. M/s Hoaechst Pharmaceutical Ltd.AIR 1987 Orissa,34 in support of the submissions raised by the learned advocate for the contractor. In that case, the question was with regard to agreement between the parties not to file suit at Cuttack and to file it only in Bombay court and in that context, it was decided that it was not proper to return the plaint five years after filing it under O.7,R.10A of the CPC as both courts had jurisdiction. In the present case,there is no question of such an agreement with regard to jurisdiction of the court or place of suing. Therefore,said decision is also not applicable and relevant to our case.

Reliance is also placed on behalf of the contractor on the decision in Pathumma vs. Kuntalan Kutty,AIR 1981 SC 1683 . It may be stated that the principle laid down in the aforesaid decision is not disputed by the other side but the question was altogether different. In that case, the question was about interpretation of provisions of Section 21 and not Section 20 (c). It was held that in order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfulment of the following three conditions is essential; (i) the objection was taken in the court of first instance, (ii) it was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement,and (iii) there has been a consequent failure of justice. The underlying purport and purpose of provisions of Sectin 21 are interpreted and highlighted. We are not concerned in the present case insofar as interpretation of provisions of Section 21 is concerned .The question directly in focus in the present case is relating to the interpretation of Section 20 (c) of the CPC.

Reliance is also placed on the decision of the Bombay High court in Bombay Steam Navigation Co. vs.Union of India,AIR 1954 Bom.145. It is a judgment of the learned Single Judge wherein the principle is laid down in the matter of interpretation of Clause 12 of Letters Patent (Bombay). There, the question was whether cause of

action would arise in view of conclusion of contract by correspondence. In that case, it was held that part of cause of action did arise in Bombay from where offer was made and where acceptance was communicated which was a continuing acceptance until it reached the offerer at Bombay. With due respect, the proposition laid down in the said decision of the Bombay High court is not correct. We have not been able to agree with the proposition laid down in the said decision that the place where acceptance of offer was communicated by correspondence was also continuing acceptance and,therefore, acceptance of offer though posted from Belgaon to be received at Bombay will have also jurisdiction where part of cause of action arose. In our opinion,this proposition is not correct. It may also be mentioned that the decision of the learned Single Judge in the above case is not rightly approved by the Division Bench of the Bombay High court in Baroda Oil Cakes Traders vs. Parshottam,AIR 1954 Bom.491 The Division Bench of the Bombay High court consisting of Gajendragadkar and Vyas,JJ. (as they then were) has held that the view taken by the Bombay High court in Bombay Steam Navigation case (supra) is not correct. Thus, the decision rendered by the learned Single Judge in AIR 1954 Bom.145 is dissented from in decision in Baroda Oil cakes case (supra). On the contrary, the ratio propounded in th Division Bench decision is directly attracted and applicable to the facts of the present case. Thus,the view which we have taken in this group of matters is reinforced by the Division Bench decision in the aforesaid case. In Baroda Oil Cake case, the facts were similar. In that case, the plaintiff sent telegram from Baroda offering to purchase 200 tons of ground nut cakes from the defendant who were resident of Kanpur. The defendant conveyed their acceptance to the plaintiff by telegram despatched from Kanpur and the said aceptance reached the plaintiff at Baroda in due course. The delivery of the goods was to be given to the plaintiff at Khanna railway station and the plaintiff had to pay the money at Kanpur to the Guru Nanak oil Mills from whom the defendant firm had purchased the goods for the plaintiff or to the agent of the said mills at Kanpur. The defendant failed to give delivery of the goods. The plaintiff brought a suit in the Baroda court against the defendants claiming damages for breach of contract.The principal defence ,as in the present case, was that the Baroda court had no jurisdiction to try the suit as the contract was made at Kanpaur as its performance was to be at Kanpur and as the payment was also to be made at Kanapur and as the breach of the contract, if any, had also occurred at Kanapur. After considering the facts

and circumstances and the evidence on record , the Division Bench of Bombay High court held that no part of cause of action arose in Baroda though the plaintiff had sent his offer from Baroda by telegram and though he received the acceptance from the defendants by telegram at Baroda.In the eyes of law, the offer was made at Kanpur and the acceptance was likewise made at Kanapur with the result that the whole of the contract was mad at Kanpur. Consequently, the Baroda court had no jurisdiction to entertain the suit. The observatins made in paras 23 and 53 and the interpretation of provisons of section 20 of the CPC an section 4 of the Contract Act are most relevant and we are in full agreement with the said observations.

Reliance is then placed on the decision of the Supreme court in A.B.C.Laminart v. A.P.Agencies, 1989(2) GLR 735. After having examined the ratio of this decision,we are of the opinion that it does not help the learned advocate of the contractor with regard to issue of jurisdiction. On the contrary, it is against th view taken by the trial court. In our view, the ratio propounded by the Supreme court in the aforesaid case clearly supports the case of the ONGC . The view taken by this court is thus reinforced by the aforesaid decision.

The ratio propounded in R.S.D.V.Finance Co.Pvt.Ltd. vs. Shree Vallabh Glas Works Ltd. AIR 1993 SC 2095 is also not helpful to the case of the plaintiff-contractor. The learned advocate for the contractor is not in a position to make any capital out of it in support of his submissions that part of cause of action arose in Mansa and,therefore, the civil court at Mehsana had jurisdiction. On the contrary, the observations and proposition laid down support the view which we have taken for allowing the appeals of the ONGC.

After having put into scales the rival versions and the relevant aforesaid proposition of law and considering the real design and purport of Section 20(c) of the CPC and Sectin 4 of the Contract Act, we have no hesitation in finding that the impugned judgment and decree recorded by the trial court at Mehsana holding that part of cause of action had arisen within its territorial jurisdiction are wholly unsustainable. Therefore, the impugned judgments and decrees in all the three appeals are allowed only on the limited ground that civil court at Mehsana had no jurisdiction to entertain the suits with the result, the plaints are required to be returned to the plaintiff for filing suits in appropriate forum or court at appropriate place in view of provisions of O.7,Rule 10 of the CPC.

Therefore, the plaints are ordered to be returned to the plaintiff or presentation to proper court having territorial jurisdiction. No doubt, we cannot resist temptation of mentioning the fact that the controversy is very old. It pertains to money on the basis of breach of contract. Therefore, the proper court on presentation of plaints will expeditiously determine and decide the dispute between the parties. We have not entered into merits of other issue decided by the trial court as decisions rendered in respect of other issues as they are examined and adjudicated upon by the trial court without jurisdiction. In the result, all the three appeals are allowed and impugned judgment and decree are quashed and set aside . The appeals are allowed. The plaints,therefore,shall be returned to the plaintiff for presentation to proper court. There shall be no order as to costs.

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